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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/680,559	10/05/2000	Emily L. Hipp	A-69722/DCA/JWC	2072

7590 09/02/2005

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EXAMINER

CHANKONG, DOHM

ART UNIT	PAPER NUMBER
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2152

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/680,559	HIPPE ET AL.	
	Examiner	Art Unit	
	Dohm Chankong	2152	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.


Dung C. Dinh
 Primary Examiner

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DETAILED ACTION

1> This action, a continuation of the advisory action, is in response to Applicant's arguments in the after final response.

2> Applicant's arguments have been carefully considered but are not deemed persuasive.

Gamache is directed towards a method for failing over applications in a clustered environment and achieves this goal in part by associating application processes with virtual identifiers. These identifiers enable the application to be "transferred" in a sense from one computer to another within the cluster by allowing the new computer to execute the application using the same parameters with which it was run in the old computer. It is Examiner's interpretation that the various parameters of the application's dependency tree are passed between computers and not the applications themselves.

Applicant is arguing in substance (a) Gamache does not teach a first process registering the virtual IP address and the virtual hostname with a software module interposed between the first application and an operating system (b) there is no teaching of a second process inheriting the virtual IP address and virtual hostname from the first process and (c) there is no teaching of an application identifier that is distinct from the virtual IP address and the virtual hostname.

Gamache discloses an application associated with a first computer and a second computer [claim 33]. Examiner interprets the application on the first computer as a first process of the claim 1 limitation and the application on the second computer as the "first application that comprises one or more second processes". The basis of this interpretation

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relies on the previous interpretation that application variables are passed from one computer to the next thereby allowing applications on a computer to undergo failover with the same execution environment on a second computer; thus, the applications are already present on each computer. Gamache seems to use the term process and application interchangeably and defines the application itself as a process[column 6 «lines 16-18»], and the understanding here is that Gamache's application is a process since the claim language allows for an application to comprise one process. Clearly since the applications are located on separate computers, the applications are also separate from one another.

The application is assigned virtual identifiers, such as a virtual computer name or an IP address, that aid in the failover process [Figure 4 | column 11 «line 63» to column 12 «line 10»].

So with respect to (a), Gamache discloses registering these virtual identifiers with a external name service [Figure 8] as well as a storage device [Figure 2 | column 6 «lines 16-26»]. The storage device contains "dependency trees" [Figure 4] that essentially contain the application's name, virtual hostname and IP address and other important variables for the application's execution environment [column 2 «lines 14-22»]. Gamache does not expressly disclose that the storage device is a software modules or that it is "interposed between" the application and an operation system. However, as can be seen in figure 2, the storage device is accessible to all computers within the cluster for the purposes of application failover [column 10 «lines 2-17»]. Examiner believes therefore that the storage can be interpreted as being "interposed" between the computers in the cluster. And since the applications and operating systems are located on the computers, it follows that the storage device is thus

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interposed between the application of one computer and the operating system of another computer [the computer where the application is to be transferred]. It is inherent that the storage device specified by Gamache is running database software programs operating to provide the necessary registration services; that is, all computers run software to implement the required functions of that computer. Therefore, it can be seen there is necessarily a software program running on the storage device that is providing the functionality of registering the application's tree structure.

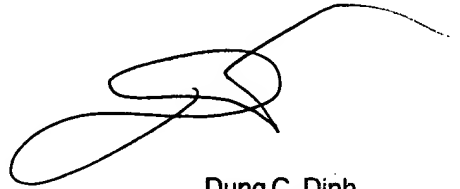
In regards to (b), Applicant is directed to [Figure 4 | column 10 «lines 2-17» | column 11 «line 63» to column 12 «line 10»] of Gamache's specification. Gamache discloses that the process of application failover comprises of a step where an application's resources (virtual hostname, IP address) are organized into a tree structure. When the application undergoes failover, or transfer to another computer, the tree is searched for the proper parameters, these parameters are then utilized to establish the environment for execution of the application on the new computer. Examiner interprets this process as one where the application on the new computer "inherits" the necessary parameters (by parsing the tree structure) from the application, the tree structure representing the resources of the first application that was running on the previous computer and the necessary parameters establishing the operating environment for the application in the new computer.

And with respect to (c), Applicant is directed again to [Figure 2 | Figure 4], and specifically item 96, that specifies the name of the application. Gamache discloses that this tree structure is stored in the storage device and accessible to other computers in the cluster. Based on the tree structure, the application's name, or identifier, is clearly used to represent

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its virtual parameters. When an application undergoes failover to a new computer, the new computer searches for the application's name and finds the required parameters that allow the environment to be established and the application to be properly executed [column 10 «lines 14-17» | column 11 «line 63» to column 12 «line 9»].

Based on the preceding remarks, Examiner maintains the rejections set forth in the previous office action, dated 7.15.2005.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

Dung C. Dinh
Primary Examiner